Calendar No. 614

100TH CONGRESS *2d Session*	SENATE	REPORT 100-316

THE SOUTH PACIFIC TUNA ACT

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1989

APRIL 18 (legislative day, APRIL 11), 1988.—Ordered to be printed

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1989]

The Committee on Commerce, Science, and Transportation to which was referred the bill (S. 1989) entitled the "South Pacific Tuna Act of 1987", having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 1989, as reported, provides domestic implementation for the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty).

BACKGROUND AND NEEDS

Despite foreign competition, rising costs and operating constraints, the U.S. tuna industry remains one of our largest and most important fishery-based industries. Tuna fishing and canning operations presently are estimated to employ about 18,000 persons in the United States. In 1986, Americans ate over 600 million pounds of canned tuna, worth almost $900 million. During the same period, the U.S. fleet landed 555 million pounds of tuna with an ex-vessel value of $217 million.

The tuna purse seine fleet is the largest remaining U.S. distant-water fishery. Approximately 90 percent of the U.S. tuna catch by weight and value comes from foreign or international waters. Traditionally, the fleet has relied on fishing operations in the waters of the Eastern Pacific for the bulk of their catch. In recent years,

however, a substantial portion of the effort has been relocated to the southwestern Pacific.

A major problem facing U.S. tuna fishermen is obtaining access to tuna resources within the exclusive economic zones (EEZs) of other nations. Tuna migrate through broad oceanic expanses, traversing the coastal waters of many nations. Because they are highly migratory, the United States does not claim nor recognize jurisdiction over tuna beyond 12 nautical miles from shore. In addition, tuna are specifically excluded from exclusive management authority under the Magnuson Fishery Management and Conservation Act (MFCMA). Current U.S. policy has been to negotiate international agreements to manage the highly migratory tuna and to secure access for U.S. fishermen to tuna stocks. By contrast, most other nations claim jurisdiction over all fisheries,, including tuna, within their 200-mile EEZs.

In the South Pacific, fisheries disputes between the United States and several Pacific island nations have resulted from conflicting juridical positions with respect to tuna. U.S. tunaboats have been seized by island nations, causing retaliatory U.S. trade embargoes as mandated by the MFCMA. In an attempt to resolve these problems and secure reliable access to South Pacific tuna resources for the U.S. fleet, the United States initiated negotiations in September 1984. The negotiations involved 16 Pacific nations, including Australia and New Zealand, and were directed toward developing a regional tuna licensing agreement.

During negotiations, an additional incentive for concluding the treaty surfaced. As U.S. relations in the region deteriorated, Soviet influence appeared to increase. In 1985, the Soviet Union, which had previously been unsuccessful in negotiating access to Pacific island fisheries, signed a 1-year fisheries agreement with Kiribati. Although the Kiribati agreement was not subsequently renewed, the Soviet Union made a similar arrangement with Vanuatu in 1987. The agreements have been viewed as the results of a Soviet attempt to influence the region economically, politically, and diplomatically.

THE TREATY

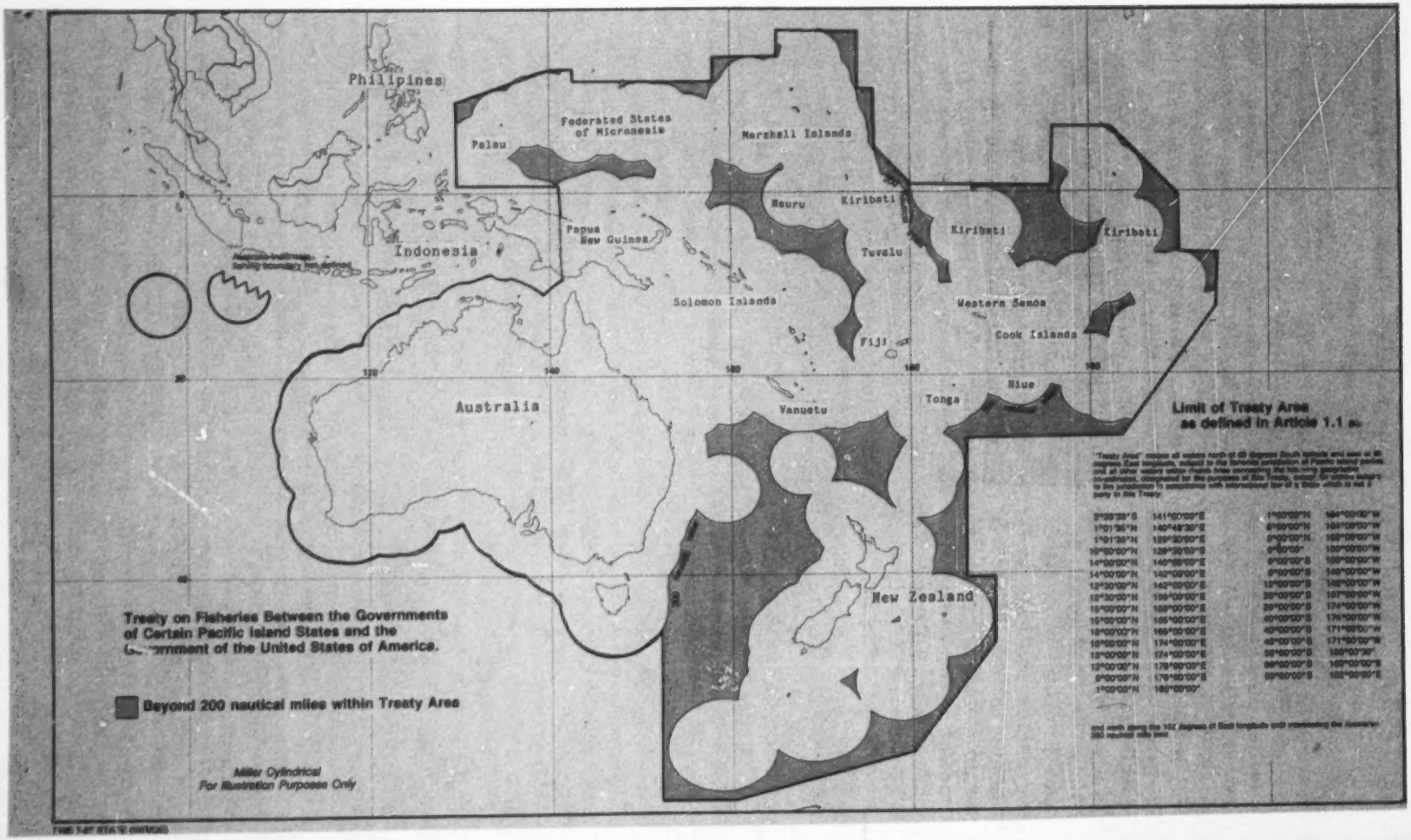
On April 2, 1987, after more than 2 years of negotiations, the United States signed a treaty with 14 Pacific island nations (Australia, Cook Islands, Federated State of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tuvalu, Vanuatu, and Western Samoa). The nation of Palau also became a signatory at a later date. The Treaty will enter into force when instruments of ratification are deposited by the United States and at least 10 Pacific island nations. These must include the Federated States of Micronesia, Kiribati, and Papua New Guinea. To date, the requisite nations have completed the ratification process and deposited their instruments of ratification, with the exception of the United States.

On June 18, 1987, the Treaty was submitted to the Senate for advice and consent. The treaty document was reported favorably by the Foreign Relations Committee on October 22. On November 6, the full Senate unanimously approved treaty ratification, and

President Reagan ratified the treaty on December 21. The Department of State currently is holding the instrument of ratification for deposit, pending enactment of domestic implementing legislation.

The Treaty, its annexes, and related agreements contain three major initiatives. First, the Treaty provides U.S. tuna fishermen with access to over 10 million square miles of rich fishing waters in the South Pacific Ocean (see attached chart). To fish in the area, a tunaboat must purchase a regional license. For the first year, up to 40 licenses would be available at a base price of $50,000 each and the industry has guaranteed a minimum total payment of $1.75 million. After 40 licenses have been issued, 10 additional licenses would be sold at a price of $60,000 each. In subsequent years, the license fee would be indexed to the price of tuna but would not fall below the base price. In addition, the industry has agreed to provide $250,000 annually in fisheries-related technical assistance to the island nations through the South Pacific Forum Fisheries Agency (FFA). After administrative costs are deducted, revenues would be distributed to the island nations in proportion to the amount of tuna taken from within their waters.

[The chart follows:]


Philippines
Federated States of Micronesia
Palau
Marshall Islands
Nauru
Kiribati
Papua New Guinea
Indonesia
Tuvalu
Kiribati
Kiribati
Solomon Islands
Western Samoa
Fiji
Cook Islands
Niue
Australia
Vanuatu
Tonga
New Zealand
Limit of Treaty Area as defined in Article 1.1 a.
Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.
Beyond 200 nautical miles within Treaty Area
Miller Cylindrical
For Illustration Purposes Only

Second, the Treaty defines procedures for regulating fishing activities and enforcing Treaty provisions. Vessels fishing for tuna in the Treaty area would be required to be licensed, to carry observers, and to abide by both the provisions of the Treaty and applicable local laws. Pacific island nations retain the right to enforce regulations and prosecute violations. The United States would be expected to assist in the investigation of claims against U.S. flag vessels. The United States also would ensure that violators submit to the jurisdiction of an involved Pacific nation or leave the Treaty area until penalties satisfactory to that nation are assessed and collected.

Finally, associated with the Treaty is an agreement between the United States and the FFA, providing an annual economic assistance package of $10 million to the Pacific island nations, in addition to the existing assistance. The funds will be provided as a cash transfer, of which $1 million will go to projects proposed by the Pacific island nations and approved by the Agency for International Development. The package represents a significant increase in U.S. financial support to the area; a report by the Congressional Research Service estimated that less than $15 million was spent in U.S. economic and military assistance to the Pacific island nations in fiscal year 1986.

LEGISLATIVE HISTORY

Proposed legislation to implement the Treaty was transmitted to the Senate by the Administration on December 18, 1987. On December 21, Senator Breaux introduced the proposed legislation as S. 1989, the South Pacific Tuna Act of 1987. A hearing on the legislation was held by the full Committee and the National Ocean Policy Study on February 23, 1988. Administration witnesses included Ambassador Edward Wolfe, Jr. of the Department of State and Dr. William Evans, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, the Department of Commerce. Additional testimony was provided by representatives of the tuna industry. On March 29, 1988, in open executive session, the Committee considered an amendment in the nature of a substitute to S. 1989, and without objection, ordered S. 1989 reported favorably as amended.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 1989 implements the licensing and regulatory requirements of the Treaty. Responsibility for carrying out the provisions of the Treaty and this legislation are assigned to the Secretary of Commerce (Secretary) and the Secretary of State.

Major provisions of S. 1989 would:

(1) Authorize the appropriation of such sums as may be necessary to carry out the provisions of the Treaty and legislation, including annual amounts of up to $350,000 for the Department of Commerce and $50,000 for the Department of State;

(2) Make violations of the Treaty violations of U.S. domestic law;

(3) Authorize the Secretary to issue regulations and to develop licensing procedures;

(4) Define violations for which civil and criminal penalties may be assessed;

(5) Outline procedures for receiving complaints, conducting investigations and hearings, and making findings concerning Treaty violations;

(6) Require that vessel operators carry observers on their vessels and report catch information to the Secretary; and

(7) Provide for an industry program of $250,000 annually in technical assistance to the Pacific island nations.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 30, 1988.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1989, the South Pacific Tuna Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1989.

2. Bill title: The South Pacific Tuna Act of 1988.

3. Bill status: As orderd reported by the Senate Committee on Commerce, Science, and Transportation, March 29, 1988.

4. Bill purpose: S. 1989 would implement the South Pacific Tuna Treaty. The treaty would establish procedures for licensing and regulating U.S. tuna fishermen in the Southwest Pacific. The National Marine Fisheries Service (NMFS) in the Department of Commerce and the Department of State would be responsible for administering the treaty. To fund these activities, the bill would authorize the appropriation of $350,000 annually to the Department of Commerce and $50,000 annually to the Department of State for fiscal years 1988 through 1992.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Authorization level	0.4	0.4	0.4	0.4	0.4
Estimated outlays		.4	.4	.4	.4

The costs of this bill fall within budget functions 150 and 300.

Basis of estimate: This estimate assumes that the full amount authorized would be appropriated for each fiscal year. The estimated outlays are based on historical spending patterns for NMFS and the State Department. For 1988, any appropriations are likely to be sufficiently late in the year so that no significant outlays would occur.

6. Estimated cost to State and local governments: None.

7. Estimated comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

Number and Type of Persons Regulated

Regulations to implement the Traty requirements will apply to owners, operators, and crew members of the U.S. tuna purse seine fleet who operate in the Southwest Pacific. For the first year after the Treaty enters force, about 35 tuna pursue seine vessels are expected to purchase licenses.

Economic Impact

The Departments of Commerce and State will incur small costs in administering the treaty as well as in establishing and enforcing regulations required by this legislation. The funding needed to carry out government responsibilities should be modest and is not expected to have an inflationary impact on the Nation's economy. In addition, the tuna industry will incur annual costs of about $2 million of licenses and technical assistance to the Pacific island nations. These costs represent only a small fraction of the potential value of tuna harvests in the region. Last year, the tuna catch in the Western Pacific was valued at about $133 million. An additional economic benefit provided to the industry is dependable access to the tuna resources in the Treaty area.

Privacy

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

Paperwork

Some additional paperwork will be required from the tuna industry, to meet the licensing and reporting requirements of the Treaty. The Committee anticipates that the increase in such routine paperwork should be small, particularly in comparison to the paperwork load associated with recovery of a vessel which has been seized by a Pacific island nation for fishing in violation of local laws.

SECTION-BY-SECTION ANALYSIS

Section 1.—Short Title

This section of the reported bill provides the short title, the "South Pacific Tuna Act of 1988".

Section 2.—Definitions

Section 2 defines terms used in the legislation. Many of the definitions are taken directly from, or refer to, the definition section (Article 1) of the Treaty. Among the terms whose definitions are taken directly from Article 1 are "Administrator", "fishing", "fishing vessel", "operator", "Pacific Island Party", "Party", and "Treaty". "Secretary" is defined as the Secretary of Commerce. "Treaty Area" is also defined, as well as subareas in which different fishing regulations apply such as "Licensing Area", "Limited Area", and "Closed Area". In addition, definitions are provided for the following terms: "Authorized Officer" "Authorized Party Officer", "applicable national law", "licensing period", "person", and "State".

Section 3.—Application to Other Laws

Section 3 restricts the use of retaliatory sanctions in the MFCMA and reimbursement provisions in the Fishermen's Protective Act (FPA) if a U.S. fishing vessel is seized by a Pacific Island Party, provided that the seizure is in accordance with the Treaty.

Section 4.—Regulations

Section 4 authorizes the Secretary, with the concurrence of the Secretary of State, to issue regulations needed to implement the Treaty and the bill. Such regulations would apply to vessels and persons under U.S. jurisdiction regardless of their location.

Section 5.—Prohibited Acts

Section 5 stipulates actions which would be prohibited under the Treaty and this legislation. The list of prohibited acts includes fishing in violation of any Treaty requirements or in violation of applicable Pacific island laws; falsification or failure to report information required by the Treaty; resistance to enforcement action taken by authorized personnel; and possession, purchase, or sale of fish obtained in violation of the Treaty.

Section 5(a)(6) requires that the Secretary be notified immediately regarding any change in circumstances which affects the accuracy of required information. In such instances, the Committee intends that the term "immediately" be intepreted to mean "at the earliest possible time". Although delays in reporting changes must be minimized, the Committee recognizes that situations may exist in which immediate notification is not possible. In such instances, the Committee believes that compliance as soon as is reasonably possible will fulfill the intent of the provision.

The text of section 5(b)(5) states that it is unlawful to operate a vessel in such a way as to disrupt or in any other way adversely affect local fishing activities. This language is meant to apply to actions by individual vessels only. The Committee does not intend that such language apply to any collective effect which the routine

and licensed operations of the U.S. tuna fleet might be alleged to have on resources traditionally utilized by local fishermen. The committee recognizes that the traditional operations of the local Pacific island fishermen generally take place in those areas closed to fishing by the U.S. fleet under the Treaty (Closed Areas). There are some instances, however, where local fishermen operate traditional fisheries outside these areas. There is no intention to prohibit vessels from conducting operations in a reasonable manner with due regard for local fisheries that may be occurring in the area. Rather, the provision should be applied to reckless or negligent actions which directly interfere with local fishermen such as swamping small craft, destroying fish aggregating devices, or causing gear conflicts.

Section 6.—Exceptions

Section 6 lists fishing activities by U.S. vessels which are exempted from Treaty requirements. Subsection (a) of this section exempts trolling for albacore more than 200 miles offshore of any Pacific island nation from the prohibitions of Section 5 and the licensing requirements of Section 9. Subsection (b) provides that vessels may use fishing methods other than the purse-seine method and may operate in Closed or Limited Areas, if such conditions are made a part of a special fishing arrangement between a U.S. vessel and a Pacific island nation.

Section 7.—Criminal Offenses

Section 7 specifies those prohibited acts listed in section 5 that are criminal offenses. Criminal acts include those offenses involving obstruction of, resistance to, or interference with, authorized Treaty personnel in carrying out their duties. The punishment for criminal offenses specified in this section is consistent with the criminal penalties called for in other U.S. fishery laws such as the MFCMA. The maximum penalty for a criminal offense is $50,000 fine and 6 months' imprisonment. An exception is provided for violations involving use of a weapon, physical harm to an officer or observer, or the threat of physical harm to such persons. Persons convicted of these more serious violations could incur a maximum fine of $100,000 and up to 10 years in prison. The U.S. district courts are given jurisdiction over criminal offenses.

Section 8.—Civil Penalties

Section 8 provides that any person who commits an act prohibited under section 5 will be liable for a civil penalty. Most civil penalties will be limited to a maximum of $250,000 per violation, as stipulated in the Treaty. This amount does exceed the maximum civil penalty for each violation which may be assessed under other U.S. domestic fishery statutes such as the MFCMA. In addition, no limitation is placed upon penalties for specified more serious offenses such as fishing without a license or obstructing the activities of authorized Treaty personnel.

Also outlined in this section are procedures for issuing notices of violations, conducting investigations and hearings, making findings, assessing and collecting penalties for civil offenses, and judicial review of findings and orders. The section clarifies that the

Secretary of State may, upon written notice, participate in any civil penalty proceeding. The Committee intends, however, that such participation in the administrative proceeding be subject to the same rules as govern participation by any other party. This section also authorizes the Secretary to subpoena witnesses and to modify civil penalties assessed under this section. If a person fails to pay a civil penalty once it has become final, the Secretary is directed to refer the case to the Attorney General for collection. No referral is to be made, however, if the vessel was properly licensed at the time of the violation and leaves the Licensing Area, all Limited Areas closed to fishing, and all Closed Areas until the penalty has been paid.

Section 9.—Licenses

Section 9 outlines procedures and conditions for obtaining licenses. It reiterates the provision of the Treaty that gives responsibility for issuing licenses and setting license periods to the Administrator, who is the licensing official designated under the Treaty. It also outlines the number and price of licenses as provided by the Treaty. In addition, this section authorizes the Secretary to receive license requests and establish licensing procedures for vessel operators. If the number of applications exceeds the available number of licenses, the Secretary may establish an allocation system. Complete and valid applications are to be forwarded to the Secretary of State for transmittal to the Administrator. Finally, after consulting with the Secretary of State, the Secretary may not forward an application if it is not in compliance with the Treaty, or is submitted by an applicant who is inadequately insured, faces bankruptcy, or has previous unpaid penalties.

Section 10.—Enforcement

The provisions of section 10 and section 11 of the bill as reported have been reversed from their order in the bill as it was introduced. The sequence of the provisions in the reported bill is considered more appropriate because it reflects the order in which the requirements of sections 10 and 11 will be implemented.

Section 10 provides the Secretary, in cooperation with the Secretary of State, with responsibility for enforcing the provisions of the bill. At the request of a Pacific Island Party, the Secretary would be required to investigate and report within 2 months on any alleged infringement of the Treaty by a U.S. vessel. Prior to initiating legal proceedings, the Secretary also would notify the Pacific island nation. Such proceedings may not be initiated if the island nation involved objects within 30 days of being notified.

The enforcement provisions in the reported bill differ from those contained in the bill as introduced, in that they require the Secretary to notify the vessel operator of the investigation at its onset. The bill as reported also requires that the operator be provided with an opportunity to offer testimony during the investigation.

This section also outlines the enforcement authority of Authorized Officers, who are U.S. enforcement officers. Among other responsibilities, an Authorized Officer may arrest suspected violators, board and search or inspect licensed vessels, seize samples of fish or items for evidence, order a vessel into port for investigation, exe-

cute warrants, and investigate alleged violations. Authorized Officers are required to exercise their powers so as not to unduly interfere with the lawful operation of a vessel.

Section 11.—Findings by the Secretary

Section 11 lists the findings by the Secretary, with the concurrence of the Secretary of State, which may result in U.S. fishing vessels being ordered to leave the Licensing Area, all Limited Areas, and all Closed Areas immediately. Following an investigation, the Secretary may find that a vessel has violated certain requirements of the Treaty or that there is probable cause to believe that a violation has occurred. If such a finding is made, and at the request of the Pacific island party involved, the Secretary then may order the vessel to leave the areas indicated above. If the basis for the finding is failure to obtain agent representation or to make full payment for penalties assessed, the order will be rescinded as soon as that failure is remedied.

In addition, the Secretary may receive notification through the Secretary of State that a Pacific island party is investigating a violation which is alleged to have occurred in waters which are under the jurisdiction of that party. The Secretary then would be required to order the vesseel to leave the waters in question until notified by the Secretary of State that such an order is no longer necessary.

This section of the bill, as reported, differs in several respects from the provisions of the bill as it was introduced. One difference is that the reported bill distinguishes those findings which may result in a vessel being ordered to leave the Treaty area from those findings which require a vessel to leave only those waters under the jurisdiction of a single island nation. In addition, the bill as reported does not contain any requirement that the Secretary provide a vessel operator with an opportunity to respond after an order has been issued. It is the understanding of the Committee that the purpose of this provision in the original bill was to ensure that vessel owners receive due process of law. Because the reported bill provides vessel owners with such an opportunity before an order is issued, this provision was not considered to be necessary and was consequently deleted.

Orders issued under this section are not subject to judicial review. The Attorney General is authorized to commence civil action to enforce any order issued under this section.

Section 12.—Reporting

Section 12 requires that licensed operators comply with the reporting requirements of the Treaty. The license holder must provide the required information to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. The purpose of designating such an entity is to ensure that the catch information provided to the governments of party nations is also available to the tuna industry which collects it. The Secretary is required to maintain such information in confidence.

Section 13.—Closed Area Stowage Requirements

Section 13 requires that when a vessel enters a Closed Area, fishing gear must be stowed in such a way that it is not readily accessible.

Section 14.—Observers

Section 14 mandates that vessel operators allow and assist observers designated by the Pacific Island Parties to carry out their functions. Specifically, operators will pick up and drop off observers as arranged, allow full access to facilities and equipment, and provide food, accommodations, and medical facilities for the observers while they are on board a vessel.

Section 15.—Technical Assistance

Section 15 stipulates that the U.S. tuna industry will provide $250,000 annually in technical assistance to the Pacific island nations. An appointee of the Secretary of State will be responsible for coordinating the provision of such assistance and for preparing an annual report.

Section 16.—Arbitration

Section 16 establishes that in the event of a dispute requiring an arbitral tribunal under the Treaty, the Secretary of State in consultation with the Secretary, shall appoint the arbitrator to be named by the United States under the Treaty and shall represent the United States in reaching agreement on the tribunal's presiding officer.

Section 17.—Disposition of Fees, Penalties, Forfeitures, and Other Monies

Section 17 provides that monies collected for civil and criminal violations will be promptly paid by the United States, through the Secretary of State, to the Administrator. To eliminate a potential source of friction between the United States and the Pacific island nations, the Committee expects that funds will be turned over to the Administrator as expeditiously as is possible, but in any case in no more than 30 days.

Section 18.—Additional Agreements

Section 18 applies to special arrangements between U.S. fishing operators and individual Pacific island nations. This section authorizes the Secretary of State, in consultation with the Secretary, to determine, in the case of each special arrangement, whether U.S. responsibilities under the Treaty shall apply.

Section 19.—Secretary of State To Act for the United States

Section 19 authorizes the Secretary of State to act on behalf of the United States and, after consultation with the Secretary, to accept or reject amendments to the Treaty's Annexes or Schedules.

Section 20.—Authorization of Appropriations

Section 20 authorizes appropriations of such sums as may be necessary to carry out the provisions of the Treaty and legislation, in-

cluding annual amounts of up to $350,000 for the Department of Commerce and $50,000 for the Department of State. This section also provides that funds appropriated for the Treaty may be used, notwithstanding certain provisions of law which might be inconsistent with Treaty obligations.

Section 21.—Effective Date

Section 21 establishes that the provisions of this bill will become effective law on the date that the Treaty enters into force for the United States, except that the authority to promulgate regulations will become effective upon enactment. Any such regulations would not, however, become effective until the Treaty enters into force for the United States.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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